

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRAHEEM POTEAT,	§	
	§	No. 142, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0107011363
Appellee.	§	

Submitted: May 24, 2010

Decided: August 12, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**ORDER**

This 12<sup>th</sup> day of August 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Braheem Poteat, filed this appeal from the Superior Court's denial of his second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The appellee, State of Delaware, has filed a motion to affirm on the ground that it is manifest on the face of Poteat's opening brief that the appeal is without merit. We agree and affirm the Superior Court's judgment.

(2) In 2003, a Superior Court jury convicted Poteat of Trafficking in Cocaine, Resisting Arrest and Possession of Cocaine. The jury acquitted Poteat of Loitering. On direct appeal, this Court affirmed Poteat's convictions pursuant to Supreme Court Rule 26(c).<sup>1</sup>

(3) In December 2004, Poteat filed a motion for postconviction relief. Poteat alleged that the evidence used against him at trial was illegally seized and should have been suppressed. Poteat argued that his trial counsel was ineffective for failing to file a motion to suppress and that the trial judge erred in admitting the evidence.<sup>2</sup> In a different claim, Poteat argued that his

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<sup>1</sup> *Poteat v. State*, 842 A.2d 647 (Del. 2003).

<sup>2</sup> On direct appeal, the Court described the evidence seizure as follows:

[O]n July 16, 2001, Officer William Draper of the Wilmington Police Department and his partner, Officer Curtis Velleverde, were on routine patrol in the City of Wilmington when they noticed Poteat and two other men on the corner of 29<sup>th</sup> and Market Streets. Officer Draper previously had warned Poteat not to loiter in the area and decided to issue him a ticket.

As the officers approached Poteat, he attempted to flag down a passing car, without success. Poteat then placed on the curb a styrofoam cup he was holding. As the officers patted down the men for weapons, one of them sat down on the curb and knocked over the cup.

Several bags of crack cocaine spilled out of the cup. Poteat attempted to flee but was subdued and placed under arrest.

*Id.* at 648-49.

trial counsel was ineffective for failing to object to Poteat wearing prison clothes at trial.

(4) By order dated March 11, 2005, the Superior Court denied Poteat's ineffective assistance of counsel claims as without merit and dismissed Poteat's suppression claim as procedurally barred.<sup>3</sup> On appeal from the Superior Court's denial of postconviction relief, this Court affirmed.<sup>4</sup>

(5) In December 2009, Poteat filed a second motion for postconviction relief. Poteat raised the same claims that he raised in his first motion. By report and recommendation dated January 25, 2010, a commissioner recommended that Poteat's motion should be summarily dismissed as procedurally barred. By order dated February 17, 2010, having received no objection to the commissioner's report and after reviewing the record *de novo*, the Superior Court denied Poteat's postconviction motion for the reasons stated in the commissioner's report and recommendation. This appeal followed.

(6) It is manifest on the face of Poteat's opening brief that the appeal is without merit. It is clear to the Court that the Superior Court properly found that Poteat's second postconviction was procedurally barred

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<sup>3</sup> *State v. Poteat*, 2005 WL 914472 (Del. Super.).

<sup>4</sup> *Poteat v. State*, 2007 WL 2309983 (Del. Supr.).

as untimely filed<sup>5</sup> and as formerly adjudicated.<sup>6</sup> The second postconviction motion, which was filed more than five years after Poteat's convictions became final, raised the same issues that Poteat raised without success in his first postconviction motion. On appeal, Poteat has not demonstrated, and the record does not reflect, that reconsideration of any of those claims is warranted in the interest of justice<sup>7</sup> or because there was a miscarriage of justice because of a constitutional violation.<sup>8</sup>

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup> See Del. Super. Ct. Crim. R. 61(i)(1) (barring motion for postconviction relief filed more than three years after judgment of conviction is final) (amended 2005 to reduce limitations period to one year for conviction final after July 1, 2005).

<sup>6</sup> See Del. Super. Ct. Crim. R. 61(i)(4) (barring formerly adjudicated claim unless reconsideration is warranted in the interest of justice).

<sup>7</sup> *Id.*

<sup>8</sup> See Del. Super. Ct. Crim. R. 61(i)(5) (excepting application of procedural bar to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the proceedings leading to the judgment of conviction).